



# **THE ATTORNEY GENERAL OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

October 18, 1960

Honorable William M. King  
Securities Commissioner  
State Securities Board  
State Office Building  
Austin 11, Texas

Opinion No. WW-951

Re: Whether the Securities Commissioner has authority to publish an administrative interpretation of Section 10A of the Securities Act.

Dear Sir:

You have requested our opinion as to whether the Securities Commissioner has authority to publish an administrative interpretation of Section 10A of the Securities Act. Article 581, V.C.S. For brevity's sake, we do not now quote the language detailed on the four pages of your request, but rather state that this interpretation defines and interprets the key phrases of Section 10A and, in addition, lists some seven factors illustrative of those to be considered in determining whether or not the proposed plan of business appears to be "fair, just and equitable" and some six factors illustrative of those not to be considered.

The application of the doctrine of "fair, just and equitable" to a particular proposed plan of business requires the exercise of discretionary judgment by the Securities Commissioner, based on the particular fact situation presented. There are a multitude of factors which may be considered with respect to any individual case and the relative weight to be given these factors is a matter within the discretion of the Commissioner. However, in determining whether or not a particular proposed plan of business is "fair, just and equitable," the Commissioner, by necessity, must test such a plan with a definite set of factors in mind. Certainly the Commissioner has authority to publish and thereby notify the securities industry of these standards of general application he will take into consideration in guiding his judgment in a determination under Section 10A.

We do not find that the Securities Commissioner is without authority to issue this administrative interpretation. However, in the absence of a particular fact situation by which to test the propriety of the illustrative factors contained in your request, this office cannot determine whether or not these facts are contrary to the intent of the Securities Act in an individual case.

SUMMARY

The Securities Commissioner has authority to publish an administrative interpretation of Section 10A of the Texas Securities Act, but the Attorney General, by this opinion, does not pass on the propriety of the illustrative factors contained therein as used in determining whether or not a particular proposed plan of business is "fair, just and equitable."

Very truly yours,

WILL WILSON  
Attorney General of Texas

By Richard A. Wells  
Richard A. Wells  
Assistant Attorney General

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APPROVED:

OPINION COMMITTEE:

W. V. Geppert, Chairman  
Virgil Pulliam  
Robert T. Lewis  
Grundy Williams  
Tom I. McFarling

REVIEWED FOR THE ATTORNEY GENERAL  
BY:

Leonard Passmore